Statement of the U.S. Chamber of Commerce

ON: Private Employer Defined Benefit Pension Plans

TO: Subcommittee on Select Revenue Measures of the House Ways and Means Committee

BY: U.S. Chamber of Commerce

DATE: September 17, 2014

The Chamber's mission is to advance human progress through an economic, political and social system based on individual freedom, incentive, initiative, opportunity and responsibility.

The U.S. Chamber of Commerce is the world's largest business federation representing the interests of more than 3 million businesses of all sizes, sectors, and regions, as well as state and local chambers and industry associations. The Chamber is dedicated to promoting, protecting, and defending America's free enterprise system.

More than 96% of Chamber member companies have fewer than 100 employees, and many of the nation's largest companies are also active members. We are therefore cognizant not only of the challenges facing smaller businesses, but also those facing the business community at large.

Besides representing a cross-section of the American business community with respect to the number of employees, major classifications of American business—e.g., manufacturing, retailing, services, construction, wholesalers, and finance—are represented. The Chamber has membership in all 50 states.

The Chamber's international reach is substantial as well. We believe that global interdependence provides opportunities, not threats. In addition to the American Chambers of Commerce abroad, an increasing number of our members engage in the export and import of both goods and services and have ongoing investment activities. The Chamber favors strengthened international competitiveness and opposes artificial U.S. and foreign barriers to international business.

Positions on issues are developed by Chamber members serving on committees, subcommittees, councils, and task forces. Nearly 1,900 businesspeople participate in this process.

Statement on
PRIVATE EMPLOYER DEFINED BENEFIT PENSION PLANS
Hearing before the
SUBCOMMITTEE ON SELECT REVENUE MEASURES
Of the
HOUSE WAYS AND MEANS COMMITTEE
on behalf of the
U.S. CHAMBER OF COMMERCE
September 17, 2014

The U.S. Chamber of Commerce would like to thank Chairman Tiberi, Ranking Member Neal, and members of the Subcommittee for the opportunity to provide a statement for the record. The topic of today's hearing – private employer defined benefit pension plans – is of significant concern to our membership. In particular, our membership is very concerned about multiemployer defined benefit plans and the application of nondiscrimination rules to frozen plans. The Chamber has been working with a number of interested parties and is pleased that the Subcommittee is taking the time to focus on these important issues.

Comprehensive Multiemployer Pension Reform

At the end of 2014, the multiemployer funding rules under the Pension Protection Act of 2006 (PPA) will expire. Consequently, parties that are interested in comprehensive multiemployer pension reform see this as an opportunity for legislative action. As sponsors of multiemployer defined benefit plans, a number of Chamber members have a substantial interest in the viability of the multiemployer plan system. Funding for multiemployer plans comes entirely from employers, who are at financial risk when a plan faces funding problems. Therefore, funding and accounting issues create substantial challenges not just in maintaining the plan but also for the employers' business.

There are several issues that the employer community would like to see addressed through multiemployer pension reform. While the PPA was a step in the right direction, additional tools are needed to ensure the proper funding of plans. In addition, there are significant concerns about "orphan" participants and escalating withdrawal liability estimates. As a result, it is critical that Congress comprehensively address the long-term funding issues of multiemployer plans.

In January 2013, the PBGC issued two reports on the multiemployer pension system. In one report, the PBGC stated that without changes to current law, the PBGC's multiemployer guarantee system will go bankrupt within 10 years.

While all defined benefit plans have been negatively impacted by the financial crisis, certain multiemployer plans have been particularly hard hit as the current financial crisis exacerbates long-term funding problems resulting from shifting demographic trends and financial problems within certain industries. While current law requires insolvent employers to pay their share of

liability upon withdrawal from the plan, most bankrupt employers are unable to realistically meet that liability. Therefore, the remaining employers become financially responsible for the retirement liabilities of the "orphaned" retirees. This system results in untenable contribution levels for the remaining employers, which can force them into insolvency as well.

Moreover, in a multiemployer plan, there is joint and several financial liability between all employers in the plan. Therefore, when one employer goes bankrupt, the remaining employers in the plan are responsible for paying the accrued benefits of the workers of the bankrupt employer. Because of this liability, there is the fear of an employer being "the last man standing" or the last remaining employer in the multiemployer plan.

In February 2013, the Retirement Security Review Commission[1] issued recommendations for change. The proposal endorses the funding rules under the PPA and includes two significant additions.[2] The first addition would allow severely distressed plans to suspend benefits for retirees. Any suspended benefit would have to be higher than the PBGC guaranteed levels and could be reinstated if the plan's funding improves. The second addition would allow plans to freeze past benefit liabilities at current levels and then move forward with a new plan that would not have withdrawal liability. The Chamber supports the recommendations of the Retirement Security Review Commission. The proposals in the report go a long way in addressing certain serious issues in the multiemployer plan system.

In addition to the recommendations from the Retirement Security Review Commission, the Chamber believes that additional reforms are needed to address employer concerns. There are many of our members who have gotten estimates of withdrawal liability that exceed the net worth of the company. Clearly, this is an outcome that was never contemplated when withdrawal liability was implemented and should be rectified. Without comprehensive reform that addresses the problem of withdrawal liability, many employers – including many small, family-owned businesses – are in danger of bankruptcy.

As part of our statement we are submitting the Chamber's Principles on Multiemployer Funding Reform for the record. We appreciate the opportunity to submit these Principles and look forward to working with Congress and other interested parties in seeking comprehensive funding reform for multiemployer plans.

Application of Non-discrimination Rules to Frozen Plans

Many companies designed their transition from a defined benefit structure to a defined contribution structure in a way that allowed older, long service employees who were close to retirement to maintain accruals under the defined benefit pension plan. However, more of these grandfathered employees are becoming highly-compensated employees. Since there are no new entrants to the plan, the number of non-highly compensated employees is becoming

[1] The Commission is a joint management and labor effort that was led by the National Coordinating Committee for Multiemployer Plans.

[2] As part of its endorsement of the current funding rules, the report includes a number of technical corrections to those rules.

smaller. This phenomenon is making it difficult for companies to pass the discrimination testing. In order to pass the tests, companies may be forced to change the retirement benefit structure (i.e., defined benefit to defined contribution) of employees who are closest to retirement with the least amount of time to make up the difference – the outcome they sought to avoid by implementing the transition period in the first place.

Earlier this year, Treasury and the IRS provided temporary guidance to address this issue. Notice 2014-5 permits certain employers that sponsor a closed DB plan and a DC plan to demonstrate that the aggregated plans comply with the nondiscrimination requirements of Code section 401(a)(4) on the basis of equivalent benefits, even if the aggregated plans do not satisfy the current conditions for testing on that basis. Under the temporary guidance, a combined defined benefit/defined contribution plan can demonstrate it has the nondiscrimination requirements for a plan year starting before January 1, 2016, if the plan was amended prior to December 13, 2013 to allow only employees participating in the defined benefit plan on a specific date to continue to accrue benefits. In addition, each defined benefit plan within a combined defined benefit/defined contribution plan must satisfy one of the two following conditions:

- For plan years beginning in 2013, the defined benefit plan was a component of a combined defined benefit/defined contribution plan that was either primarily defined benefit in character or consisted of broadly available separate plans; or

- The defined benefit plan was not part of a DB/DC plan for the plan year beginning in 2013 because the DB plan satisfied the coverage and nondiscrimination requirements without aggregation with any DC plan.

While the Chamber appreciates the temporary guidance, permanent relief is needed. The Chamber recommends revising the nondiscrimination rules so that if a group of employees is grandfathered (i.e., allowed to continue to accrue a benefit after a plan is otherwise frozen to new entrants) and that group of employees is a nondiscriminatory group when the plan is frozen, it would be treated as a nondiscriminatory group permanently unless the group or the benefit formula applicable to the group is modified by plan amendment.[3] This recommendation would prevent frozen plans from violating the rules prohibiting discrimination in favor of highly compensated employees and allow these long-serving employees to continue to accrue benefits under a defined benefit plan. Chairman Tiberi and Ranking Member Neal have introduced legislation that would provide this relief permanently in H.R. 5831.[4] We urge Congress to move forward with this legislation.

We understand that IRS and Treasury are concerned about this recommendation. Primarily, the concern is about preventing abuse of these provisions. We believe that this is not an issue for plans that have already terminated. If a plan has already closed, there is no chance the closure was done to take advantage of a rule that was not yet in existence. For future plan closures, there should be a facts and circumstances test. In this way, the agencies could ensure that closures are

[3] Rep. Richard Neal (D-MA) included this proposal in legislation he introduced in the 112th Congress - H.R. 4050, *The Retirement Plan Simplification and Enhancement Act*.

[4] Senators Cardin (D-MD) and Portman (R-OH) have introduced a companion bill in the Senate, S. 2855, *The Retirement Security Preservation Act.*

not done to abuse the nondiscrimination rules and all plan sponsors would have an opportunity to maintain benefit promises made to longer-serving employees.[5]

Conclusion

Thank you for the opportunity to comment on these important issues in the defined benefit plan system. We look forward to working with Congress and all interested parties to ensure the continued viability of the private defined benefit plan system.

[5] We recommend that such facts and circumstances tests only need to be done once. After the Treasury and IRS determine that the closure had non-abusive purpose, the plan would be deemed to be non-discriminatory as long as there are no further amendments to the plan.

U.S. Chamber of Commerce
Principles on Multiemployer Funding Reform

Reform of the Multiemployer Plan Funding System is Necessary. The Chamber supports multiemployer funding reform. Without such reform, many employers – including many small, family-owned businesses – are in danger of bankruptcy. Without real reform to the multiemployer system and resolutions to the underlying problems, more employers will be forced into bankruptcy and more workers will be left without a secure retirement.

The Chamber Supports the Recommendations of the Retirement Security Review Commission. On February 19, the Retirement Security Review Commission of the National Coordinating Committee for Multiemployer Plans issued a report entitled *Solutions Not Bailouts.* Several members of the Chamber participated in the Commission and contributed to the findings of the report. The proposals in the report recommend that deeply troubled plans be given the authority to cut benefits, subject to certain guidelines and review, and the authority to offer alternative plans to attract new employers and retain existing employers that are crucial to the solvency of these plan. The proposals go a long way in addressing certain serious issues in the multiemployer plan system. As such, the Chamber fully supports the recommendations and believes that the recommendations can provide a critical foundation for reform of the multiemployer pension system.

Any Multiemployer Funding Reform MUST Address Withdrawal Liability. There are many of our members who have gotten estimates of withdrawal liability that exceed the net worth of the company. Clearly, this is an outcome that was never contemplated when withdrawal liability was implemented and should be rectified. Most people agree that withdrawal liability has been a failed experiment. Rather than encouraging participation in multiemployer plans, it has discouraged new employers from joining multiemployer plans. In addition, it has not been the financial salve it was expected to be. It is commonly acknowledged by funds and their representatives that multiemployer plans recover an estimated 10 cents on the dollar - if they are able to collect anything at all. Consequently, changing such a detrimental part of the system is critical to retaining existing employers and attracting new employers and essential if any reform efforts are going to be successful.

Comprehensive Funding Reform Should Focus on Making Plans Financially Solvent on an Ongoing Basis. While fixing immediate concerns in the multiemployer system is necessary, comprehensive reform must also include methods for ensuring the financial viability of the system. Without such reforms, the multiemployer system will be in a perpetual state of crisis and continue to pose risks for employers, workers, and retirees.

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